



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA-R03-OAR-2022-0776; FRL-10292-02-R3]

Outer Continental Shelf Air Regulations; Consistency Update for Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is updating a portion of the Outer Continental Shelf (OCS) Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by the Clean Air Act (CAA). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which Maryland is the designated COA. The State of Maryland's requirements discussed in this document will be incorporated by reference into the Code of Federal Regulations (CFR) and listed in the appendix to the Federal OCS air regulations.

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2022-0776. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through www.regulations.gov, or at the U.S. Environmental Protection Agency, EPA

Region 3 Regional Office, Air and Radiation Division, Four Penn Center, 1600 JFK Blvd., Philadelphia, PA 19103. EPA requests that you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Supplee, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2763. Ms. Supplee can also be reached via electronic mail at supplee.gwendolyn@epa.gov.

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I. Background and Purpose

On September 4, 1992, EPA promulgated 40 CFR part 55¹, which established requirements to control air pollution from OCS sources in order to attain and maintain Federal and state ambient air quality standards and to comply with the provisions of part C of title I of the CAA. The regulations at 40 CFR part 55 apply to all OCS sources offshore of the states except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the CAA requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements

¹ The reader may refer to the notice of proposed rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792), for further background and information on the OCS regulations.

may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

On October 19, 2022 (87 FR 63465), EPA published a notice of proposed rulemaking (NPRM) proposing to incorporate various Maryland air pollution control requirements into 40 CFR part 55. Pursuant to 40 CFR 55.12, consistency reviews will occur: (1) At least annually; (2) upon receipt of a Notice of Intent (NOI) under 40 CFR 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in 40 CFR part 55. EPA's NPRM was initiated in response to the submittal received by EPA on August 5, 2022, of a NOI, from US Wind, Inc., for the proposed installation of an up to 2-gigawatt offshore wind energy facility located approximately 10 nautical miles off the coast of Maryland. In accordance with 40 CFR 55.5, Maryland is the designated COA for this project. EPA intends to address post-NPRM state amendments in its next annual update consistent with 40 CFR 55.12. This action addresses only those regulations identified for incorporation in NPRM, namely the Maryland regulations that were updated as of July 28, 2022.

EPA reviewed the Maryland Department of the Environment ("MDE") air rules for inclusion in 40 CFR part 55 in this action to ensure that they are rationally related to the attainment or maintenance of Federal or state ambient air quality standards and compliance with part C of title I of the CAA, that they are not designed expressly to prevent exploration and development of the OCS, and that they are potentially applicable to OCS sources. See 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. See 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules², and requirements that regulate toxics which are not related to the attainment and maintenance of Federal and state ambient air quality standards.

² Each COA which has been delegated the authority to implement and enforce part 55 will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce 40 CFR part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. See 40 CFR 55.14(c)(4).

Section 328(a) of the CAA requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into 40 CFR part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into 40 CFR part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the CAA. Consistency updates may result in the inclusion of state or local rules or regulations into 40 CFR part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the CAA for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

The specific requirements of the consistency update and the rationale for EPA's action are explained in the October 19, 2022, NPRM. No comments were received on the NPRM.

II. Public Comments and EPA Responses

EPA did not receive any comments on the NPRM. (October 19, 2022, 87 FR 63465).

III. Final Action

EPA is taking final action to incorporate the rules potentially applicable to OCS sources for which the State of Maryland will be the COA. The rules that EPA is taking final action to incorporate are applicable provisions of the Code of Maryland Regulations (COMAR): (1) Chapter 8, Control of Incinerators – COMAR 26.11.08; (2) Chapter 17, Nonattainment Provisions for Major New Sources and Major Modifications General – COMAR 26.11.17; and (3) Chapter 20, Mobile Sources – COMAR 26.11.20, as amended through July 28, 2022. The rules that EPA is taking final action to incorporate will replace the rules identified in the October 19, 2022, NPRM and previously incorporated into "State of Maryland Requirements Applicable to OCS Sources," dated December 6, 2018, which was incorporated by reference into 40 CFR

part 55. See 84 FR 34065; July 16, 2019. This action will have no effect on any provisions that were not subject to changes by Maryland and were also previously incorporated by reference into 40 CFR part 55 through EPA's July 16, 2019 (84 FR 34065) final rule.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of "State of Maryland Requirements Applicable to OCS Sources," dated July 28, 2022, which provides the text of MDE air rules in effect as of July 28, 2022, that would apply to OCS sources **and described in Section I of this Supplementary Information**. EPA has made, and will continue to make, these materials available through www.regulations.gov and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore air pollution control requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. See 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, EPA's role is to maintain consistency between OCS regulations and the regulations of onshore areas, provided that they meet the criteria of the CAA. Accordingly, this action simply updates the existing OCS requirements to make them consistent with requirements onshore, without the exercise of any policy direction by EPA. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

Additionally, Executive Order 12898 (59 FR 7629, February 16, 1994) directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color and/or Indigenous peoples) and low-income populations.

EPA believes that this specific action does not concern human health or environmental conditions and therefore cannot be evaluated with respect to potentially disproportionate and adverse effects on people of color, low-income populations and/or Indigenous peoples. This action simply fulfills EPA's statutory mandate to ensure regulatory consistency between the COA and inner OCS consistent with the stated objectives of CAA section 328(a)(1).

Specifically, section 328(a)(1) requires EPA to establish requirements to control air pollution

from OCS sources “to attain and maintain Federal and State ambient air quality standards and to comply with the provisions of part C of [title I of the CAA]” and, for inner OCS sources (located within 25 miles of the seaward boundary of such states), to establish requirements that are “the same as would be applicable if the source were located in the COA.” This section of the Act also states that “the Administrator shall update such requirements as necessary to maintain consistency with onshore regulations and this chapter.” As noted in the preamble, compliance with this requirement limits EPA’s discretion in deciding what will be incorporated into 40 CFR part 55.

From the time of EPA’s last consistency update for Maryland (84 FR 34065, July 16, 2019) to the publication of the NPRM (87 FR 63465, October 19, 2022), state regulations relevant to the OCS had minor amendments. This action incorporates into the CFR those minor updates to state regulations, which are already effective onshore, to ensure regulatory consistency with the COA as mandated by CAA section 328(a)(1). This is a routine and ministerial consistency update that does not directly affect any human health or environmental conditions in the State of Maryland. In addition, EPA provided for meaningful public involvement on this rule through the notice and comment process, through which EPA received no comments. This rule was in addition to the State-level notice and comment process held by Maryland.

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, nor does it impose substantial direct compliance costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take

effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).).

This action does not impose any new information collection burden under the Paper Reduction Act (PRA). See 44 U.S.C 3501. The Office of Management and Budget (OMB) has previously approved the information collection activities contained in the existing regulations at 40 CFR part 55 and, by extension, this update to part 55, and has assigned OMB control number 2060-0249³. This action does not impose a new information burden under PRA because this action only updates the state rules that are incorporated by reference into 40 CFR part 55, appendix A.

List of Subjects in 40 CFR Part 55

³ OMB’s approval of the information collection requirement (ICR) can be viewed at www.reginfo.gov.

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Outer continental shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Adam Ortiz,
Regional Administrator,
Region III.

Part 55 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Pub. L. 101-549.

2. Section 55.14 is amended by revising paragraph (e)(10)(i)(A) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

* * * * *

(e) * * *

(10) * * *

(i) * * *

(A) State of Maryland Requirements Applicable to OCS Sources, July 28, 2022.

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3. Appendix A to part 55 is amended by revising paragraph (a)(1) under the heading “Maryland” to read as follows:

Appendix A to Part 55 – Listing of State and Local Requirements Incorporated by

Reference Into Part 55, by State

* * * * *

Maryland:

(a) * * *

(1) The following State of Maryland requirements are applicable to OCS Sources, July 28, 2022, State of Maryland – Department of the Environment.

The following sections of Code of Maryland Regulations (COMAR) Title 26 Subtitle 11:
COMAR 26.11.01 - General Administrative Provisions (Effective as of December 6, 2018)

COMAR 26.11.02 - Permits, Approvals, and Registrations (Effective as of February 12, 2018)

COMAR 26.11.03 - Permits, Approvals, and Registration- Title V Permits (Effective as of November 12, 2010)

COMAR 26.11.05 - Air Pollution Episode System (Effective as of November 12, 2010)

COMAR 26.11.06 - General Emission Standards, Prohibitions, and Restrictions (Effective as of July 02, 2013)

COMAR 26.11.07 - Open Fires (Effective as of November 12, 2010)

COMAR 26.11.08 - Control of Incinerators (Effective as of May 4, 2020)

COMAR 26.11.09 - Control of Fuel-Burning Equipment, Stationary Internal Combustion Engines and Certain Fuel-Burning Installations (Effective as of December 6, 2018)

COMAR 26.11.13 - Control of Gasoline and Volatile Organic Compound Storage and Handling (Effective as of July 21, 2014)

COMAR 26.11.15 - Toxic Air Pollutants (Effective as of November 12, 2010)

COMAR 26.11.16 - Procedures Related to Requirements for Toxic Air Pollutants (Effective as of November 12, 2010)

COMAR 26.11.17 - Nonattainment Provisions for Major New Sources and Major Modifications (Effective as of December 30, 2019)

COMAR 26.11.19 - Volatile Organic Compounds from Specific Processes (Effective as of September 28, 2015)

COMAR 26.11.20 - Mobile Sources (Effective as of February 7, 2022)

COMAR 26.11.26 - Conformity (Effective as of November 12, 2010)

COMAR 26.11.35 - Volatile Organic Compounds from Adhesives and Sealants (Effective as of November 12, 2010)

COMAR 26.11.36 - Distributed Generation (Effective as of February 12, 2018)

COMAR 26.11.39 - Architectural and Industrial Maintenance (AIM) Coatings (Effective as of April 2016)

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